



U.S. General Services Administration 2013 Chief Freedom of Information Act Officer Report

**March 2013** 

### Message from the Chief Freedom of Information Act Officer



I am pleased to issue the U.S. General Service Administration's (GSA's) 2013 Chief Freedom of Information Act (FOIA) Officer Report.

GSA strives to respond to FOIA requests in a timely and accurate manner. Through education and awareness, the GSA leadership team has ensured program support and responsiveness to FOIA requests by employees at all levels and in all organizations.

GSA remains committed to providing the highest quality customer service to our federal partners and American citizens.

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### I. Steps Taken to Apply the Presumption of Openness

## 1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

The GSA Freedom of Information Act Office along with the Office of the General Counsel, conducted many types of FOIA training, including single-day and multi-day training events, recurring conference calls, orientation sessions, and webinars. These FOIA trainings were held for both current and new employees.

## Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

Yes, many GSA FOIA professional employees from regional offices and headquarters attended off-site training made available throughout the year by the American Society of Access Professionals (ASAP) and the Department of Justice (DOJ). For example, on October 11, 2012, GSA hosted DOJ FOIA professionals to conduct training for eight GSA Central Office FOIA personnel. The training covered BASIC FOIA 101, basic redaction and new rules and regulations that will be released by DOJ. Additionally, Central Office FOIA personnel attended the FOIA for Attorneys and Access Professionals conducted by DOJ.

## 2. Did your agency make any discretionary releases of otherwise exempt information?

GSA does not track discretionary disclosures, and therefore does not have this information. GSA's offices operate under the presumption of openness, with an approach of pro-disclosure in the review and release of documents. GSA's FOIA regulations provide that "GSA will not withhold a record unless there is a compelling reason to do so; i.e., disclosure will likely cause harm to a Governmental or private interest. In the absence of a compelling reason, GSA will disclose a record even if it otherwise is subject to exemption." 41 C.F.R. 105-60.103-2.

## 3. What exemptions would have covered the information that was released as a matter of discretion?

Although no empirical data exist, most discretionary releases are normally covered by (b)(2) and (b)(5) exemptions of FOIA. Given the types of records GSA maintains, most exempt records contain privileged or confidential commercial or financial information, or personal privacy information; therefore, they are not eligible for discretionary release.

## 4. Provide a narrative description, or some examples of, the types of information that your agency released as a matter of discretion.

All FOIA decisions are viewed through a prism of openness. As stated above, GSA's regulations require discretionary disclosures whenever possible and exemptions asserted only after a determination has been made that there would be foreseeable harm to the Government, a person, or an outside entity. This is accomplished by the program office during its review of the

FOIA request and the Office of General Counsel, as any proposed redaction or withholding requires concurrence from the Office of General Counsel.

GSA program offices which may have records responsive to FOIA requests are responsible for searching for and locating records, and for reviewing responsive records for material that may be exempt from release before providing the records to the FOIA Requester Service Office.

Managers perform an assessment, including a description of the harm that will result if exempt material is released. If there is no articulable harm, the record is released.

## 5. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

The principle of openness and discretionary disclosures is an integral part of GSA's internal FOIA training and regulations. The regulations provide that GSA will invoke no exemption if disclosure would cause no demonstrable harm to any government or private interest.

# II. Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. Do FOIA professionals within your agency have sufficient IT support?

Yes, any issues and updates needed to our electronic FOIA system are responded to quickly and efficiently. We recently appointed a dedicated Systems Administrator who works with the vendor and the users to address any issues and troubleshoot problems. Additionally, after the electronic system was upgraded all end users were required to attend a mandatory training on the new features.

In addition, in Fiscal Year 2013 we will implement mandatory FOIA data training, which will cover new features in our system software upgrade and how to use the software with new procedures that currently being developed.

2. Do your FOIA professionals work with your agency's Open Government Team?

Our FOIA professionals work with the Open Government Team as needed.

3. Has your agency assessed whether adequate staffing is being devoted to FOIA administration?

GSA is reviewing the workload of FOIA staff and developing a revised staffing plan. GSA is also taking steps to consolidate and centralize certain administrative functions, including the FOIA program. Centralization of the FOIA program will provide more consistent staffing and standards, with FOIA professionals dedicated to administering the FOIA program on a full-time basis.

4. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, streamlining consultations, eliminating redundancy, etc.

The FOIA Office has been working to streamline and enhance its FOIA processing and tracking system. In the process, GSA has consulted with other agencies, including the Treasury Department and the Environmental Protection Agency, to learn best practices regarding technology and processes. Additionally, the FOIA staff performs monthly spot checks on the workflows to ensure compliance with the FOIA and that all processes are complete. A detailed description is provided in response to the questions on technology in Section IV.

### **III. Steps Taken to Increase Proactive Disclosures**

1. Provide examples of material that your agency has posted this past year.

In addition to existing information about how to submit FOIAs and the GSA FOIA contact information, GSA posted the following new information on the <u>gsa.gov</u> FOIA page:

- Requested Records and Documents GSA routinely posts information regarding our Agency as required under FOIA (5 USC 552(a)(2)). Currently, governing laws, final opinions, orders, agency policies, staff manuals, service agreements and GSA certifications are available on this site.
- <u>FOIA Reading Room</u> -- FOIA records and documents that have been requested more than three times are posted to make the documents easily available to the public in the interest of transparency and working toward a more open government.
- <u>Status of FOIA Requests</u> -- This report allows requesters to check on the status of their individual request consistent with the Open Government Act of 2007. Information is displayed by request identification, received date, due date, request status and completion date.
- Open Government FOIA This area provides information about how GSA handles FOIA
  request to promote participation, collaboration and transparency in the Agency's processes as
  part of President Barack Obama's Open Government Initiative. Under "Anticipated Reforms,"
  we provide information about how our FOIA staff continues to improve operations and better
  serve the needs of citizens.
- <u>Additional resources</u> We include links to sites like our Federal Procurement Data System and existing GSA resources including Federal Governmentwide Acquisition Contracts (GWACs).
- 2. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities on the site, creating mobile applications, providing explanatory material, etc.?

We continually solicit and use visitor feedback to improve our website content, search capabilities, navigation, site performance, and similar functions through the use of web analytics tools such as satisfaction surveys, web traffic tools, and web usability studies. These activities are not specific to GSA's FOIA postings, but the FOIA program is included in the reviews and feedback.

3. If so, provide examples of such improvements.

GSA is currently reviewing feedback and analyzing data. After this review is complete, GSA will determine how it can make posted information more useful to the public.

4. Describe any other steps taken to increase proactive disclosures at your agency.

As stated previously, it is GSA's policy to proactively disclose records. We continue to highlight proactive disclosures at training sessions. Attorneys and FOIA staff are trained on GSA's FOIA regulations and current Government policy where the idea of proactive disclosure is stressed.

### IV. Steps Taken to Greater Utilize Technology

1. Can FOIA requests be made electronically to your agency?

Yes, FOIA requests can be made to our agency electronically either directly from the <u>gsa.gov</u> web site or via e-mail to <u>gsa.foia@gsa.gov</u>. Additionally, if a person prefers, he or she may mail, hand-deliver, or fax a request to GSA. If requesters have questions, they are encouraged to call the GSA FOIA Office. Telephone numbers are available at gsa.gov

2. If your agency is decentralized, can FOIA requests be made electronically to *all* components of your agency?

In Fiscal Year 2012, Regional Offices could receive FOIA request via an email or fax to the Regional FOIA point-of-contact. As of Fiscal Year 2013, all FOIA request will be received and processed by Central Office.

3. Can a FOIA requester track the status of his/her request electronically?

Yes, the GSA FOIA website allows users to track and obtain the status of their FOIA requests. The system in place is not currently designed with real time status information, but GSA is considering ways to improve such information.

4. If so, describe the information that is provided to the requester through the tracking system. For example, some tracking systems might tell the requester whether the request is "open" or "closed," while others will provide further details to the requester throughout the course of the processing, such as "search commenced" or "documents currently in review." List the specific types of information that are available through your agency's tracking system.

The GSA FOIA website allows users to determine the date GSA received the request, the due date, the request status ("pending" or "closed"), and the completion date, if applicable.

5. In particular, does your agency tracking system provide the requester with an estimated date of completion for his or her request?

Not at this time.

6. If your agency does not provide online tracking of requests, is your agency taking steps to establish this capability?

GSA does provide a basic online tracking function and the Agency is exploring ways to make the system more robust.

7. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

GSA tracks all agency FOIA requests through an electronic tracking database and workflow correspondence management system. This system has been recently upgraded to the newest available version to enhance efficiency and streamline our overall FOIA administrative process. This self-contained system facilitates record searching, sorting, and electronic document sharing capabilities between GSA employees nationwide. The system assists the FOIA program with complete workflow tracking management, including tracking the legally required FOIA time limits, assisting with FOIA monies collection documentation, and ensuring the management and accountability of each FOIA request through to successful completion.

8. If so, describe the technological improvements being made.

As mentioned above, the tracking system was enhanced with many updates and revisions to the current processing system, which has improved the overall efficiency.

# V. Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

- 1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.
  - a. Does your agency utilize a separate track for simple requests?

No, GSA does not differentiate between simple and complex request by employing a multi-tracking system; GSA tracks and monitors all FOIA requests received through one tracking system.

b. If so, for your agency overall, for Fiscal Year 2012, was the average number of days to process simple requests twenty working days or fewer?

Not applicable.

c. If your agency does not track simple requests separately, was the average number of days to process non- expedited requests twenty working days or fewer?

No, our average to process non-expedited requests exceeded the twenty working days.

- 2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2012 as compared to Fiscal Year 2011. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2011 and Fiscal Year 2012 should be used for this section.
  - a. If your agency had a backlog of requests at the close of Fiscal Year 2012, did that backlog decrease as compared with Fiscal Year 2011?

No. For Fiscal Year 2011, GSA reported a backlog of 21 requests. Fiscal year 2012 GSA reported a backlog of 56 requests.

b. If your agency had a backlog of administrative appeals in Fiscal Year 2012, did that backlog decrease as compared to Fiscal Year 2011?

No. GSA reported three administrative appeals on backlog for Fiscal Year 2011 and four administrative appeals were reported for Fiscal Year 2012.

c. In Fiscal Year 2012, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2011?

Yes, GSA closed its ten oldest FOIA requests.

d. In Fiscal Year 2012, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2011?

Yes, GSA closed its ten oldest FOIA administrative appeals.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

#### Request Backlog:

a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

Yes.

b. Was the lack of a reduction in the request backlog caused by a loss of staff?

No.

c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

Yes. GSA received many requests from news organizations. Some of these requests were quite large in terms of the numbers of records to be retrieved and reviewed. This likely slowed down the responses and greatly impacted the Agency's ability to get more responses out, especially as the agency centralized more of the FOIA program.

d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

There were no other causes.

### **Administrative Appeal Backlog:**

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

Yes.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

No.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

No.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

There were no other causes.

4. OIP has issued <u>guidance</u> encouraging agencies to make interim releases whenever they are working on requests that involve a voluminous amount of material or require searches in multiple locations. By providing rolling releases to requesters agencies facilitate access to the requested information. If your agency had a backlog in Fiscal Year 2012, please provide an estimate of the number of cases in the backlog where a substantive, interim response was provided during the fiscal year, even though the request was not finally closed.

GSA cannot estimate number of cases because the requests are considered open and the decentralized nature of GSA's FOIA operations in FY 12 does not lend itself to accurately capturing this information. However, GSA is working to make improvements in this area.

### Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of the FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptional circumstances to "treat the records as not subject to the requirements of [the FOIA]," 5 U.S.C. § 552(c)(1),(2),(3),please answer the following questions:

1. Did your agency invoke a statutory exclusion during Fiscal Year 2012?

The GSA has not invoked a statutory exclusion during FY 2012.

2. If so, what was the total number of times exclusions were invoked?

Not applicable.

### **Spotlight on Success**

Out of all the activities undertaken by your agency since March 2012 to increase transparency and improve FOIA administration, describe here one success story that you would like to highlight as emblematic of your agency's efforts. The success story can come from any one of the five key areas.

To improve the administrative processing of FOIA requests, the GSA FOIA Office has made several technological enhancements to its online tracking system that save time, better track concurrences, and facilitate the calculation of processing of fees. The recent enhancements include:

- The ability to manage and gather information more efficiently while reducing the amount of paper being consumed in the process.
- Employment of the "Extended Workflow" feature which makes it possible for any GSA employee to provide input to the information gathering process related to answering FOIA request without adding to the overall cost.
- The ability of users to use mobile devices, which provides the ability of the entire workforce to respond to inquiries faster and from any location.
- Replacing old servers used to host the online tracking system, thus lowering the cost of operating the system and moving forward toward reducing our carbon footprint.
- Increased training of staff.
- Centralization of intake and review processes.